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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLON MARCEL MONTES,

Defendant and Appellant.

A148731

(Solano County Super. Ct.
Nos. FCR308635, VCR222895)

Counsel appointed for defendant Marlon Marcel Montes has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, and determine if there are any arguable issues that require briefing. Defendant was informed of his right to file a supplemental brief, but he elected not to do so.

BACKGROUND

The offenses alleged in the consolidated actions against defendant were described by the probation officer as follows (minor nonsubstantive modifications have been made):

“FCR308635: On June 30, 2014, [victim] contacted the police department after she returned home and discovered the defendant in her backyard. While [victim] was on the phone with dispatch, she noticed what she believed was a lookout vehicle parked in front of her residence with the engine running. She reported that the female subject inside the vehicle drove away, but returned and slowly drove past her residence. She reported the female subject then parked in the parking lot of a church near her home before driving away.

“Codefendant Jennifer R. was contacted by officers in the subject vehicle and detained. She was placed under arrest after methamphetamine was found in her purse. During a search of the vehicle, which officers were able to determine was associated with the defendant; his checkbook, several hundred house and vehicle keys, and multiple garage door openers were discovered. Additionally, two cell phones were located, one of which codefendant Jennifer R. identified as hers. While transporting codefendant Jennifer R. to the police department, her cell phone began to ring. Dispatch was able to determine that the phone number belonged to a payphone outside of FoodMaxx. Officers responded to the location and subsequently detained the defendant. [¶] . . . [¶]

“VCR222895: On January 6, 2015, officers were dispatched to a residence in response to burglary in progress. The 11 year old witness J.A., provided dispatch with a physical description of the subject, including the clothing he was wearing. Dispatch also advised that the subject was associated with a vehicle which was parked in front of the victim’s residence. This subject was later positively identified as the defendant. Victim J.A. was contacted at the residence and advised that his son, witness J.A., called him and told him that someone had broken into their home. He stated that he told [his son] to call the police and advised [his son] that he was on his way home. Victim J.A. reported that when he arrived home approximately seven minutes later, he went upstairs and heard someone inside of his bedroom. He stated that the bedroom door had been locked, but he was able to force it open. He advised that when he entered the bedroom, he observed the defendant hanging from the master bedroom window ledge, while also holding a red crowbar. He stated the defendant fell to the ground and fled towards the side yard.

“The victim reported that he ran to the front of his residence and saw the defendant sitting inside the vehicle which was parked in front of his residence. The victim was able to take a photo of the defendant’s vehicle before the defendant exited the vehicle and ran towards Redwood Parkway. [¶] . . . [¶]

“The defendant was contacted while walking in the 600 block of Columbus Parkway. Officers noted that he was wearing clothing described by witness J.A. After being detained, the defendant was searched and two small Ziploc baggies containing

methamphetamine were found in his left jacket pocket. . . . A search of the defendant's right jacket pocket yielded a plastic . . . Ziploc bag containing various items belonging to the victim and his wife, including a card with their home alarm information. In addition, a fraudulent California Driver's license with the defendant's picture was located"

After the two criminal actions were consolidated, and at the conclusion of a preliminary examination, defendant was ordered held to answer on four charges—two counts of first degree burglary, one count of possessing a controlled substance, and one count of possessing a "deceptive government document," something prohibited by Penal Code section 529.5, subdivision (c). The ensuing information also included allegations that defendant had three prior burglary convictions that qualified as serious felonies for purposes of the "Three Strikes" law.

It appears that even before defendant's arraignment, the two sides commenced extended discussions looking towards a negotiated disposition. That goal was reached on May 5, 2016.

On that date the court was advised that defendant would, among other things, change his plea to the burglaries counts from not guilty to no contest, and admit one of the strike prior allegations.¹ The parties stipulated to a sentence of 16 years and eight months. With appropriate admonitions and questions, the court accepted the changed pleas. Both sides further stipulated to a factual basis for the new pleas. The remaining charges and enhancement allegations were dismissed. On June 2, 2016, the trial court sentenced defendant to the aggregate term of 16 years and eight months in state prison.

DISCUSSION

The scope of reviewable issues on appeal after a guilty plea is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the

¹ Defendant also agreed to admit an enhancement allegation that he committed the second burglary while out on bail for the first burglary (Pen. Code, § 12022.1), even though this allegation was not included in the information. Defendant agreed to waive this irregularity. After defendant filed his notice of appeal, he changed counsel and unsuccessfully opposed the prosecution's motion to "amend and consolidate" the two already consolidated actions to correct this omission.

proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 894–896.)

Defendant was at all times represented by competent counsel who safeguarded defendant's interests.

Defendant's change of pleas complied with the formalities required by *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122. There was an adequate factual basis for the changed pleas. (See *People v. Palmer* (2013) 58 Cal.4th 110, 118 [trial court made reference to specific documents and counsel stipulated to factual basis].)

No part of the aggregate sentence was illegal. Moreover, "[w]here the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction." (*People v. Hester* (2000) 22 Cal.4th 290, 295.) Defendant's custody and conduct credits were correctly calculated in the manner required by Penal Code sections 4019 and 2933.1.

Our independent review has disclosed no arguable issues that require further briefing.

The judgment of conviction is affirmed.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.

A148731; *P. v. Montes*